IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Criminal Appeal No.57 of 2000.

Judgment reserved on: 10.5.2007

Date of decision: 1.6.2007

State of H.P. **..Appellant.**

Versus

Ramesh Chand **..Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, J.

Whether approved for reporting ?[1] *No.*

For the Appellant : Mr. Ashok Chaudhary, Addl. A.G.

For the respondent : Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate.

Surjit Singh, J.

Respondent was sent up for trial for offence under Section 379 of the Indian Penal Code for allegedly felling 42 "Kail" trees from the Government demarcated protected forest and removing the timber of those trees in the year 1993-94. The Challan was filed by the police on 10.10.1996.

2 Respondent was charged by the trial Magistrate with an offence under Section 379 I.P.C. He pleaded not guilty to the charge and was, therefore, tried for the said offence. On the conclusion of the trial, the trial Magistrate acquitted him.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

3. Appellant-State filed an appeal against the order of acquittal alongwith a petition seeking leave of the Court to appeal. Leave was granted and appeal was admitted.

4. The trial Court has acquitted the respondent on the grounds that the challan was filed on expiry of three years period prescribed under Section 468 Cr. P.C. and that the respondent had earlier been prosecuted for the same offence and acquitted and, therefore, the second trial was not permissible in view of the bar contained in Section 300 Cr. P.C.

5. I have heard the learned Additional Advocate General as also the learned counsel for the respondent and gone through record.

6. FIR was lodged against the respondent on 28.10.1994 in which it was alleged that he had felled 42 "Kail" and "Rai" trees. Matter was investigated. 132 planks and "Kadis" were found in the house of the respondent. The volume of these planks and "Kadis" was 6.458 cubic meters. A list of stumps found on the spot was also drawn.

7. Even though one of the witnesses of the prosecution, namely PW-4 Shri G.C. Negi, Assistant Collector, who carried out the demarcation on 7.9.1996, stated that the age of the apple plants found on the spot, which had allegedly been planted by the respondent, was 2 to 2½ years, PW5 Ram Singh, Range Officer, very categorically stated that when he visited the spot on getting a complaint dated 28.10.1994 from PW6 Mohar

Singh, he found that the age of the stumps was 5 to 20 years. A list of stumps was drawn which is Ext.PW2/B. The list is dated 28.10.1994. As per this list, stumps of 42 trees of "Kail", "Rai" and "Jamun" species were noticed. Eight stumps of "Kail" trees were about 5 years old, 12 were 10 to 20 years old; 5 stumps of "Rai" trees were about 5 years old and 15 were 10 to 20 years old and 2 stumps of "Jamun" trees were about 5 years old. That means, the felling had taken place between 5 to 20 years prior to the registration of the case. It is nobody's case that the forest department came to know about the felling of the trees only when the case was registered or counting was done.

8. Offence under Section 379 I.P.C. is punishable with three years imprisonment. Section 468 Cr.P.C. says that no Court shall take cognizance of an offence punishable with imprisonment that may run upto three years if the case is filed on expiry of three years period from the date of the commission of offence.

9. In view of the above stated position, no fault can be found with the trial Court's judgment acquitting the respondent. Hence, the appeal is dismissed.

June 1, 2007(ss) **(Surjit Singh), J**